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NEWSLETTER

April 1982

No. 82-003

STATEMENT OF ECONOMIC INTERESTS DEADLINE APRIL 15

April 15 is the deadline for receipt of Statement of Economic Interest Forms filed by certain officeholders. Those required to file include:

- (1) All elected officials of the State, counties, municipalities, and political subdivisions
- (2) All candidates for public elective office
- (3) Any person appointed to fill the unexpired term of an otherwise elective office
- (4) All employees of regulatory agencies who are associated with a regulated business
- (5) Salaried members of State boards, commissions, or agencies
- (6) The chief administrative official or employee of each State agency or department, and of each county, municipality, and political subdivision
- (7) The deputy administrative official or employee of each State agency or department
- (8) The director of each separate institution or facility of a State agency or department
- (9) All county board of education and school district board members
- (10) All county and school district superintendents of education
- (11) The chief finance official or employee of each State agency or department, and each county, municipality, or political subdivision
- (12) The chief purchasing official or employee of each State agency or department, and each county, Municipality, and political subdivision
- (13) All members of the Judiciary

The Statement of Economic Interests Forms were mailed in early January directly to each person who appears to be required to file. If the form has not been received, copies may be obtained from the Commission office or the office of the County Clerk of Court.

COMPLAINT ACTIONS

At a hearing on January 12, the Commission conducted a hearing into allegations that Eunice Doe, a Jasper County Councilwoman, participated in deliberations and votes on the county school district budget which included substantial salary increases for school teachers. Mrs. Doe was, at the time, a school teacher in the county, but later resigned that position. Mrs. Doe was publicly reprimanded for violating Section 8-13-460.

Seven candidates were cited during the January meeting for not filing timely Campaign Disclosure Forms: Hubert Blizzard, successful candidate for Perry City Council; Maxie Gainey and Johnny Gingrich, defeated candidates for Patrick City Council; Thomas R. Hill, defeated candidate for Mayor of Lamar; Edward J. McIver, successful candidate for Florence City Council; Larry E. Turner, defeated candidate for Pickens City Council; and Cecil E. Cheek, defeated candidate for McColl City Council. The seven candidates were publicly reprimanded by the Commission.

Waymon K. Stuart, Jr., Superintendent of Anderson County Schools, was cited at the February 16 meeting for not properly filing a Statement of Economic Interests which was due on April 15, 1981. The matter was referred to the Attorney General's Office. Stuart has since filed the required Statement. Victor Neeley, a defeated candidate for Irmo City Council, was reprimanded for failing to file a Campaign Disclosure Form within 30 days after the September 7 election. Neeley has since filed the required Statement.

On March 16, the Commission publicly reprimanded James D. Kennedy and John B. Williams, defeated Florence City Council candidates, for not filing timely Campaign Disclosure Forms. Both candidates have now filed.

DIGEST OF ADVISORY OPINIONS

82-010

January 12, 1982

SUBJECT: OFF-DUTY EMPLOYMENT OF WILDLIFE EMPLOYEES

Two fisheries biologists may provide services to lake and pond owners for noxious weed and algae control, reclamation, fertilization, liming, treatment of fish parasites, and chemical sales consistent with off-duty employment guidelines. The employees may not utilize their public position to channel prospective clients to their outside business, take action to delay or kill public actions or decisions affecting such services, or utilize their positions to obtain favorable treatment for their outside business. The Wildlife Department was advised to monitor the off-duty employment.

82-015

January 12, 1982

SUBJECT: BUSINESS INTERESTS OF PROSPECTIVE SCHOOL BOARD TRUSTEE

A prospective school board trustee was advised that he must not participate in any procurement process in which he or his business has a financial interest. The potential trustee, if elected, is required to disclose his potential conflict and disqualify himself from taking any action or making any decision regarding the potential conflict. He was also advised to seek an opinion from legal counsel concerning §59-69-260 which prohibits school trustees from having an interest in contracts with school districts.

82-016

January 12, 1982

SUBJECT: ACCEPTANCE OF GIFTS OF FOOD OR ANYTHING OF VALUE BY PUBLIC OFFICEHOLDERS

The State Ethics Act prohibits employees and members of regulatory agencies from accepting anything of value from regulated businesses. There are no outright prohibitions against the acceptance of gifts by employees or officials in agencies which are not regulatory in nature. The Act prohibits any compensation to influence an official action or decision. A gift is considered "compensation to influence" if it is given with repetitive frequency, is of an extravagant nature, or is accompanied with a specific request or demand for action. The acceptance of a gift of money is strictly prohibited.

82-017

January 12, 1982

SUBJECT: POST-EMPLOYMENT FOR CONSTRUCTION DIVISION DIRECTOR

The Director of the Division of Construction at the Department of Corrections may not resign his position with the department and contract with the agency to provide all construction services. The Director has participated in recommendations of the contracting arrangement which would not go out for public bids.

82-018

January 12, 1982

SUBJECT: PUBLIC EMPLOYEE RUNNING FOR AND HOLDING ELECTIVE OFFICE

The State Ethics Act does not prohibit a public employee from running for or holding any publicly elective position. The Ethics Act does provide that a public official would be required to disclose and disqualify himself from any matters coming before either public position requiring his action or decision which would affect his other public position. The Commission advised that information regarding the effect of the Hatch Act should be obtained from the Federal Office of Personnel Management.

82-019

February 16, 1982

SUBJECT: MAYOR'S BUSINESS CONDUCTING BUSINESS WITH OTHER GOVERNMENTAL SUBDIVISIONS

The Mayor of Mount Pleasant may participate in contracting with other political subdivisions for refuse collection services. The Mayor may not participate in any official decisions or actions which will affect such a procurement to be awarded to his business.

82-020

February 16, 1982

SUBJECT: WILDLIFE TECHNICIAN ENGAGING IN COMMERCIAL TRAPPING

A wildlife technician in the furbearer program may engage in commercial trapping consistent with outside employment guidelines provided he has no responsibility for regulation or enforcement. The employee may not utilize his public position to channel prospective clients to his outside business, take action to delay or kill public actions or decisions affecting such service, or utilize his position to obtain favorable treatment for the outside activity. The Wildlife Department was also advised to monitor closely the outside employment.

82-021

February 16, 1982

SUBJECT: SPOUSE OF SCHOOL DISTRICT EMPLOYEE APPOINTED TO SERVE ON SCHOOL BOARD

The State Ethics Act does not address the issue of nepotism in public agencies. Once appointed, the member of a school board may not participate in matters involving the financial interests of his spouse, who is employed in the school district, in accordance with §8-13-460.

82-022

February 16, 1982

SUBJECT: FILING OF STATEMENT OF ECONOMIC INTERESTS - MEMBERS OF YOUTH SERVICES BOARD

The members of the Board of the Department of Youth Services are designated as a special school district Board of Trustees and therefore are required to file the Statement of Economic Interests in accordance with §8-13-810.

82-023

February 16, 1982

SUBJECT: TAX COMMISSION OUTSIDE WORK POLICY

Employees of the Tax Commission may engage in outside employment consistent with the off-duty employment guidelines. Employees who have responsibility for preparation of tax returns should not charge for this service nor should employees whose responsibility includes auditing and enforcement prepare outside tax returns which may fall within their jurisdiction.

82-024

February 16, 1982

SUBJECT: COUNTY COUNCILMAN SERVING ON COUNTY FIRE SERVICE BOARD

The State Ethics Act does not address the issue of who may serve on various public agency boards and commissions. A member who is allowed to serve in two capacities may not take ac-

tion or make decisions in one position which affect his other public position. The Commission expressed concern that a council member would be serving as both a master and servant if allowed to serve on the fire service board. The Commission also called attention to the dual officeholding provisions of the State Constitution and the prohibition against county officials holding any other office of honor or profit.

82-025

February 16, 1982

**SUBJECT: COMMISSIONERS OF PUBLIC WORKS -
PAYMENT OF FRINGE BENEFITS**

The payment of medical insurance from the operational funds of the commission of public works may violate the provisions of §8-13-410 if such benefits are not provided legally. The State Ethics Commission noted an earlier Attorney General's opinion prohibiting the payment of salaries to commissioners of public works and recommended that legal counsel be contacted to determine whether such fringe benefit payment is legal.

82-026

February 16, 1982

**SUBJECT: COUNTY COUNCIL MEMBER VOTING ON
SCHOOL FUNDING**

County council members have been advised that voting on school budget matters affecting salaries of themselves or members of their households is prohibited by §8-13-460. However, matters not affecting their financial interests or members of their households would not fall within this prohibition. A determination as to whether a particular matter would be basis for disqualification should be based on obtaining adequate budget information from the school district prior to any such vote or decision.

82-027

February 16, 1982

SUBJECT: CITY COUNCILMEN VOTING ON GRANT

Two members of a city council would be required to follow the procedures of §8-13-460 in matters which will involve matters pertaining to their business associations on a grant utilized by the city. Since decisions regarding funding are obtained from the county, rather than the city, and since all citizens of the town are equally eligible within guidelines for such grant funding, it does not appear that the two councilmen would be required to follow the disclosure and disqualification procedures, except on matters coming before city council which will substantially affect directly their own financial interests.

82-028

March 16, 1982

**SUBJECT: MEMBER OF CLEMSON BOARD OF TRUSTEES
ASSOCIATED WITH BUSINESS CONTRACTING WITH CLEMSON**

A member of the Board of Trustees of Clemson is prohibited from participating in any procurement in which a business with which he is associated has a financial interest. Provided that the contract follows the proper contracting process, the official's business firm may bid and perform work provided he discloses his interest and disqualifies himself from any actions or decisions concerning the contract.

82-029

March 16, 1982

**SUBJECT: HIGHWAY PATROL SERGEANT EMPLOYED
AS MOTOR VEHICLE DEALER**

A Sergeant of the Highway Patrol may not engage himself as a licensed motor vehicle dealer since he has supervisory authority for inspection of records of such dealers. Such employment would impede the full discharge of his duties as an enforcement officer.

✓ 82-030

March 16, 1982

SUBJECT: LIBRARY BOARD MEMBER ASSOCIATED WITH BANK

An officer of a bank may participate in budgetary and financial matters which would not directly affect the bank's interests while he serves on the county library board. The officer is required to follow the disclosure and disqualification procedures of §8-13-460 on matters coming before the library board concerning a depository for library funds or investments to be handled by such a bank. The written statement of potential conflict should be provided to the presiding officer, and either made a part of the recorded minutes or noted in the minutes with the written statement attached thereto.

82-031

March 16, 1982

SUBJECT: OFF-DUTY EMPLOYMENT OF HIGHWAY PATROLMEN

Off-duty Highway Patrolmen may be employed part time with the U.S. Marshall's Office provided that such work does not utilize public materials and equipment, does not interfere with the needs of the public agency, the public position is not utilized to obtain or continue such employment, and such work is engaged in on other than normal working hours. §23-24-10 provides for such outside employment by law enforcement officers with utilization of uniforms and equipment with the approval of the employing agency.

82-032

March 16, 1982

**SUBJECT: FILING OF STATEMENT OF ECONOMIC
INTERESTS- MEMBER OF COASTAL COUNCIL**

A member of the S.C. Coastal Council is not required to file the Statement of Economic Interests since he is not an official appointed to fill the unexpired term of an elective office, is not the chief administrative official, chief finance official or purchasing official of the agency, and is not a salaried member of the Council.

82-033

March 16, 1982

**SUBJECT: SCHOOL TRUSTEE APPOINTED TO NEWBERRY
COLLEGE BOARD OF TRUSTEES**

There is no conflict in a member of a public school board of trustees also serving on the Board of Trustees of a private college located outside the school district.

82-034

March 16, 1982

**SUBJECT: COUNTY COUNCILMAN SERVING ON
CONSERVATION DISTRICT COMMISSION**

The State Ethics Act does not address the issue of who may serve on various public agency boards and commissions. A member who is allowed to serve in two public capacities may not take action or make decisions in one position which affect his other public position. The Commission expressed concern that a council member would be serving as both a master and servant if allowed to serve on the conservation district board. The Commission also called attention to the dual officeholding provisions of the State Constitution and the prohibition against county officials holding any other office of honor or profit.

82-035

March 16, 1982

**SUBJECT: COLLEGE PROFESSOR RUNNING FOR AND
HOLDING FEDERAL OFFICE**

An Assistant Professor may campaign for Federal office during his off-duty hours and provided he utilizes no public materials and equipment. Questions concerning the functioning of his campaign committee should be directed to the Federal Election Commission. Whether he should resign or take a leave of absence if he should win Federal office is a matter which should be handled by the personnel policies of S.C. State College.

OFFICEHOLDERS RUNNING FOR ELECTIVE OFFICE

by James M. Holly, Assistant Attorney General

There is no State law or statewide personnel regulation that prohibits persons holding positions in State or local government from offering for elective office. However, there are several additional legal matters that we bring to their attention. The purpose of this article is to discuss some of those matters.

Agencies and institutions of the State and local governments may promulgate their own personnel regulations and policies on this subject. Many have done so, but the content varies widely. Some regulations or policies prohibit persons subject to them from offering for any elective office; others have prohibitions pertaining only to certain offices (e.g., those held by the governing body or official which employs the prospective candidate). They also may prohibit direct participation in any political campaigns or party activities, or they may only state that such activities cannot be engaged in during working hours. Thus, the first priority of a person holding a position with a State agency or institution or a local government who is interested in becoming a candidate should be to determine if there are any such regulations and policies and to review them carefully.

The Attorney General's Office often receives inquiries about the "Hatch Act," a Federal law that has sections applicable to some State and local government employees. The law, which can be found in Title 5 of the United States Code at Sections 1501 to 1508, applies, with a few exceptions, to persons employed by agencies or departments of a state or a local government "whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a Federal agency." Among other restrictions, this law prohibits persons subject to it from being candidates for elective office, except where none of the candidates in the election represent a partisan political party. (e.g., Some municipal elections in South Carolina are nonpartisan). The responsibilities for interpreting this law rest with the Office of the General Counsel of the United States Civil Service Commission. Inquiries on it should be made to that office at 1900 E. Street, N.W., Washington, DC 20415 (telephone: 202-632-7600).

Another consideration applies to persons who hold appointive, elective or other public offices, as opposed to positions of employment, with the State or local governments. Article VI, Section 3 and Article XVII, Section 1A of the South Carolina Constitution prohibit one person from holding at the same time "two offices of honor and profit." This circumstance is commonly referred to as dual office-holding. The most important factor in determining whether a particular position is a public office and subject to the dual office-holding prohibition is whether it has duties set forth in State laws or local ordinances or regulations which require some exercise of the sovereign power of the State. Other factors looked at to determine whether a public office is involved are whether the position's qualifications, tenure, salary and other similar specifics are provided by law, ordinance or regulation. The dual office-holding prohibition does not prevent a person holding a public office from offering for election to another public office. However, if a person holding a public office assumes another by appointment, election or otherwise, the decisions of the State Supreme Court have held that he or she is deemed to have thereby vacated the former office.

Inquiries to this office also concern qualifications for various elective offices. Article VI, Section 1 of the Constitution states that no person shall be elected to any office unless he possesses the qualifications of an elector. The Attorney General's Office has interpreted this to mean that to be elected and assume office a person must be a qualified elector, that is legally registered to vote in the county, voting precinct and other unit of local government in which he seeks election.

If a person holding a position with the State or a unit of local government is considering offering for elective office, he or she should review carefully the foregoing matters. Any doubt concerning them should result in an inquiry being made to the authorities previously mentioned and to the attorney for the agency, institution or local government with which the person holds a position.

State Ethics Commission

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